

## **CHAPTER 9.**

### **Overall Annual DBE Goal and Projections for FAA-funded Contracts**

The Federal Aviation Administration (FAA) directly provides funds to ADOT for certain aviation-related contracts at the Grand Canyon National Park Airport.<sup>1</sup> Therefore, ADOT must operate the Federal DBE Program for FAA-funded contracts.

ADOT's current overall goal for DBE participation in those contracts — 3.30 percent — is for the three years ending September 30, 2016. By October 1, 2016, ADOT is required to set an overall annual goal for DBE participation in its FAA-funded transportation contracts. ADOT has been operating a solely race-neutral program for these contracts.

This Disparity Study provides information to ADOT that will help it set this overall DBE goal and make other decisions concerning its operation of the Federal DBE Program for FAA-funded contracts. (The 2014 Availability Study did not analyze information for setting an overall three-year DBE goal for FAA-funded contracts.) Chapter 9 contains three parts:

- A. Establishing a base figure;
- B. Consideration of a step 2 adjustment; and
- C. Portion of overall DBE goal for FAA-funded contracts to be met through neutral means.

#### **A. Establishing a Base Figure**

As for FHWA-funded contracts discussed in Chapter 8, establishing a base figure is the first step in calculating an overall annual goal for DBE participation in ADOT's FAA-funded contracts.

Chapter 5 presented results from the availability analysis for FAA-funded contracts during the July 2007 through June 2013 study period. Currently-certified DBEs were available for 4.87 percent of those ADOT FAA-funded transportation contracts ADOT might consider 4.87 percent as the base figure for its DBE goal. Chapter 5 explains the methodology for the base figure calculation in considerable detail.

---

<sup>1</sup> The Keen Independent study team identified 19 FAA-funded contracts at Grand Canyon National Park Airport between July 2007 and June 2013 for a total of \$19.7 million.

## B. Consideration of a Step 2 Adjustment

Per the Federal DBE Program, ADOT must consider potential step 2 adjustments to the base figure when determining its overall DBE goal for FAA-funded contracts. Federal regulations outline factors that an agency must consider:

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training, and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant factors.<sup>2</sup>

Keen Independent completed an analysis of each of the above step 2 factors and was able to quantify the effect of certain factors on the base figure. Other information examined was not as easily quantifiable but is still relevant to ADOT as it determines whether to make any step 2 adjustments.

**1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years.** USDOT's "Tips for Goal-Setting" suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars going to DBEs).

**DBE participation based on ADOT Uniform Reports to FAA.** ADOT reported no prime contract or subcontract awards or payments to DBEs in its FFY 2012, FFY 2013 and FFY 2014 in Uniform Reports of DBE Awards or Commitments and Payments reported to the FAA. (Median DBE participation based these data for these three years is 0.00 percent.)

**DBE participation based on Keen Independent utilization analysis for FAA-funded contracts.** The Keen Independent study team collected FAA-funded contract information directly from Grand Canyon National Park Airport. The study team identified two contracts going to one DBE firm totaling \$1.3 million (one contract in 2010 and one in 2013). Based on these data, DBE participation on FAA-funded contracts was 6.9 percent.

**Summary.** ADOT might consider these data when determining whether to make a step 2 adjustment based on past DBE participation. Keen Independent recommends using the 6.90 percent figure from the Disparity Study.

### **2. Information related to employment, self-employment, education, training, and unions.**

Chapter 4 summarizes information about conditions in the Arizona transportation contracting industry for minorities, women and MBE/WBEs. Detailed quantitative analyses of marketplace conditions in Arizona are presented in Appendices E through H. Keen Independent's analyses indicate that there are barriers that certain minority groups and women face related to entry and advancement and business ownership in the Arizona construction and engineering industries. Such barriers may affect the availability of MBE/WBEs to obtain and perform ADOT and local agency transportation contracts.

---

<sup>2</sup> 49 CFR Section 26.45.

It may not be possible to quantify the cumulative effect that barriers in employment, education, and training may have had in depressing the availability of minority- and women-owned firms in the Arizona transportation contracting industry. However, the effects of barriers in business ownership can be quantified, as explained in Chapter 8.

The study team used regression analyses to investigate whether race, ethnicity and gender affected rates of business ownership among workers in the Arizona construction and engineering industries. The regression analyses allowed the study team to examine those effects while statistically controlling for various personal characteristics including education and age (Appendix F provides detailed results of the business ownership regression analyses).<sup>3</sup> Those analyses revealed that African Americans, Native Americans and white women working in construction were less likely than non-minorities and white men to own construction businesses, even after accounting for various gender-neutral personal characteristics. Each of these disparities was statistically significant.

In Chapter 8, Keen Independent analyzed the impact that barriers in business ownership would have on the base figure for FHWA-funded contracts if African Americans, Native Americans and white women owned businesses at the same rate as similarly-situated non-minorities and white men. This type of inquiry is sometimes referred to as a “but for” analysis because it estimates the availability of MBE/WBEs *but for* the effects of race- and gender-based discrimination.

The analysis indicated a possible upward step 2 adjustment of 3.71 percentage points (see Figure 8-2 in Chapter 8). This might be an appropriate upward step 2 adjustment if ADOT chose to make such an adjustment.

**3. Any disparities in the ability of DBEs to get financing, bonding and insurance.** Analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs.

- Any barriers to obtaining financing and bonding might affect opportunities for minorities and women to successfully form and operate construction and engineering businesses in the Arizona marketplace.
- Any barriers that MBE/WBEs face in obtaining financing and bonding would also place those businesses at a disadvantage in obtaining ADOT and local agency construction and engineering prime contracts and subcontracts.

Note that financing and bonding are closely linked, as discussed in Chapter 4 and Appendix J.

There is also evidence that some firms cannot bid on certain public sector projects because they cannot afford the levels of insurance required by the agency. This barrier appears to affect small businesses, which might disproportionately impact minority- and women-owned firms.

The information about financing, bonding and insurance supports an upward step 2 adjustment in ADOT’s overall annual goal for DBE participation in FAA-funded contracts.

---

<sup>3</sup> The study team examined U.S. Census data on business ownership rates using methods similar to analyses examined in court cases involving state departments of transportation in California, Illinois and Minnesota.

**4. Other factors.** The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.<sup>4</sup>

Among the “other factors” examined in this disparity study was the success of MBE/WBEs relative to majority-owned businesses in the Arizona marketplace. There is quantitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors. Chapter 4 summarizes that evidence and Appendix H presents supporting quantitative analyses. There is also qualitative evidence of barriers to the success of minority- and women-owned businesses, as summarized in Chapter 4. Some of this qualitative information suggests that discrimination on the basis of race, ethnicity and gender affects minority- and women-owned firms in the Arizona transportation contracting industry.

**Approaches for making step 2 adjustments.** Quantification of potential step 2 adjustments is discussed below.

**1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years.** Analysis of this factor might indicate a downward step 2 adjustment if ADOT based this determination on its reported 0 percent DBE participation for recent years.

However, DBE participation estimated by Keen Independent indicated 6.9 percent participation over the study period and a contract to a DBE as recently as 2013. This might indicate an upward step 2 adjustment, or no adjustment at all.

**2. Information related to employment, self-employment, education, training, and unions.** The study team was not able to quantify all of the information regarding barriers to entry for MBE/WBEs. Quantification of the business ownership factor indicates an upward step 2 adjustment of 3.71 percentage points to reflect the “but-for” analyses of business ownership rates presented in Figure 10-2. If ADOT made this upward adjustment, the overall DBE goal for FAA-funded contracts would be  $4.87 + 3.71 = 8.58$  percent.

**3. Any disparities in the ability of DBEs to get financing, bonding and insurance.** Analysis of financing, bonding and insurance indicates that an upward adjustment is appropriate. However, impact of these factors on availability could not be quantified.

**4. Other factors.** Impact of the many barriers to success of MBE/WBEs in Arizona could not be specifically quantified. However, the evidence supports an upward adjustment.

**Summary.** ADOT will need to consider whether to make a downward, upward or no step 2 adjustment when determining its overall DBE goal.

---

<sup>4</sup> 49 CFR Section 26.45.

### **C. Portion of DBE Goal for FAA-funded Contracts to be Met through Neutral Means**

As explained in Chapter 8, the Federal DBE Program requires state and local transportation agencies to meet the maximum feasible portion of their overall DBE goals using race- and gender-neutral measures. Along with setting an overall goal for DBE participation, agencies must project the portion of that goal they expect to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any). USDOT offers guidance concerning how transportation agencies should project the portions of their overall DBE goals that will be met through race- and gender-neutral and race- and gender-conscious measures, as outlined in detail in Chapter 8. (The extensive discussion in Chapter 8 is not repeated here.)

**1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?** The 2015 Disparity Study provides results of the local marketplace research (summarized in Chapter 4) and analyses of MBE/WBE utilization and availability (see Chapters 6 and 7). This information is also summarized below.

**Marketplace conditions.** As discussed in Chapter 4, Keen Independent examined conditions in the Arizona marketplace, including:

- Entry and advancement;
- Business ownership;
- Access to capital, bonding and insurance; and
- Success of businesses.

There was quantitative evidence of disparities in outcomes for minority- and women-owned firms in general and for certain MBE/WBE groups concerning the above issues. Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes. It is important to note that some minority and female business owners interviewed did not think they had been affected by race or gender discrimination.

ADOT should review the information about marketplace conditions presented in Chapter 4 and Appendices E through H, as well as other information it may have, when considering the extent to which it can meet its overall DBE goal through neutral measures.

**Disparity analysis.** There was a substantial disparity between the utilization of MBE/WBEs combined (11.5%) and what might be expected from the availability analysis for MBE/WBEs (24.8%). The disparity index was 46.

- MBEs received one contract that represented 4.5 percent of FAA-funded contract dollars, less than what might be expected based on the availability analysis for MBEs for these contracts (16.8%). The disparity index for MBEs was 27.
- White women-owned firms received 6.7 percent of contract dollars, also less than the 8.0 percent that might be expected based on the availability analysis for FAA-funded contracts. The disparity index for WBEs was 86.

Figure 6-10 in Chapter 6 presents overall utilization and availability results for MBEs and WBEs in FAA-funded contracts.

**Summary.** There is substantial evidence that there is not a level playing for minority- and women-owned firms in the Arizona marketplace.

**2. What has been the agency's past experience in meeting its overall DBE goal?** As ADOT reported no DBE participation in FFYs 2012, 2013 and 2014, it did not meet its goal of 3.30 percent in any of those years based on its Uniform Reports.

Results based Keen Independent data for July 2007 through June 2013 indicate that ADOT utilization of DBEs (6.7%) was higher than its current 3.30 percent overall goal for FAA-funded contracts.

Keen Independent recommends that ADOT consider the information for DBE participation in FAA-funded contracts developed as part of this Disparity Study. Based on those results, it appears that ADOT could meet a goal in the range of 4.87 percent solely through neutral means.

**3. What has DBE participation been when ADOT has not applied DBE contract goals (or other race-conscious remedies)?** All of the DBE participation for FAA-funded contracts has been without application of DBE contract goals or other race-conscious programs.

**4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?** When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, ADOT must review the race- and gender-neutral measures that it and other organizations have in place, and those it has planned or could consider for future implementation.

Keen Independent's analysis of neutral remedies in Chapter 7 indicates that ADOT has implemented an extensive set of neutral measures. At this time, it is difficult to quantify how much the current and planned initiatives can increase race-neutral participation of DBEs in ADOT's FAA-funded contracts.

Keen Independent also examined other potential neutral measures. Research into expanded SBC programs, such as SBC contract goals and an SBC set-aside program, indicate that ADOT might not have the authority under state law to implement such measures. Although ADOT might consider further research into these two initiatives, it does not appear that they could be implemented within the FFY 2016 through FFY 2018 time period for which these projections apply (or ever implemented).

## Summary

Chapter 9 provides information to ADOT as it considers its overall DBE goal for FFY 2017 through FFY 2019 for FAA-funded contracts and its projection of the portion of its overall DBE goal to be achieved through neutral means.

**1. Overall DBE goal for FAA-funded contracts.** ADOT might consider an overall DBE goal of 4.87 percent based on updated information in the Disparity Study (see Chapter 5 and further exploration earlier in Chapter 9).

**2. Should ADOT project that it can meet all of its overall DBE goal through neutral means?**

ADOT must consider whether it can achieve 100 percent of its overall DBE goal through neutral means or whether race-conscious programs are needed. The historical information summarized in Chapter 9 indicates that ADOT might be able to achieve an overall DBE goal of 4.87 percent entirely through neutral means.